

**Rule 26, Ariz. R. Crim. P.**

**Memorandum to the Court re: Juvenile Restitution**

**In a juvenile criminal damage case, the court must order the juvenile to pay full or partial restitution to the building owner that bore the loss, even though the building owner was not the named victim of the offense.**

This Court has ordered memoranda from the parties concerning whether this Court can order the juvenile to pay restitution to ABC Corporation, the owner of the damaged building and the entity that actually bore the loss, even though ABC Corporation is not named as a victim in the petition. For the reasons set forth in this Memorandum, this Court must order full or partial restitution to the property owner.

Briefly, the facts are that the juvenile in this case threw rocks through the windows of a residence occupied by John J. The juvenile was charged with criminal damage and the petition named John J. as the victim. The juvenile was then adjudicated delinquent for criminal damage. John J. then stated that he had leased the property from the building owner, ABC Corporation, and that ABC had assumed total financial responsibility for the necessary repairs.

This Court has asked for memoranda on the issue of whether ABC, as a third party entity not identified as a “victim” in police reports, may be awarded restitution in such a case. The answer is “yes.” Arizona statutes require this Court to order the juvenile to pay full or partial restitution to ABC Corporation, the building owner that bore the actual loss.

First, the term “victim” is defined in the Arizona Constitution and in the Arizona statutes. Article 2, § 2.1(C) of the Arizona Constitution defines “victim” as follows:

“Victim” means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person’s spouse,

parent, child or other lawful representative, except if the person is in custody for an offense or is the accused.

One of the enabling statutes enacted to implement the Victims' Bill of Rights is A.R.S. § 13-4401(19), which defines "victim" in the exact language used in the Constitution:

"Victim" means a person against whom the criminal offense has been committed, or if the person is killed or incapacitated, the person's immediate family or other lawful representative, except if the person is in custody for an offense or is the accused.

In construing Arizona statutes, "'Person' includes a corporation, company, partnership, firm, association, or society, as well as a natural person." A.R.S. § 1-215(29).

Article 2, § 2.1(D) of the Arizona Constitution gave the legislature and the people the authority to enact laws extending victim rights to juvenile proceedings. A.R.S. § 8-344 provides for restitution in juvenile cases. Subsection A of that statute reads:

A. If a juvenile is adjudicated delinquent, the court, after considering the nature of the offense and the age, physical and mental condition and earning capacity of the juvenile, shall order the juvenile to make full or partial restitution to the victim of the offense for which the juvenile was adjudicated delinquent or to the estate of the victim if the victim has died. The juvenile shall make restitution payments to the clerk of the court for disbursement to the victim or estate of the victim.

§ 8-344(A) affirmatively requires this Court to order "full or partial restitution to the victim." Subsection B of § 8-344 further requires the juvenile court to notify the victim of the dispositional hearing and allows the court to consider a verified victim statement concerning the victim's losses, and subsection C allows the court to order the juvenile's parents to pay restitution to the victim. Subsection C also states: "If the court orders the juvenile's parents to make restitution pursuant to this subsection, the court shall order the juvenile to make either full or partial restitution, regardless of the juvenile's insufficient earning capacity. The court shall not consider the ability of the juvenile's parents to pay restitution before making a restitution order." "Thus, the obligation for a

juvenile offender to pay full or partial restitution to a victim is mandatory.” *In re Ryan A.*, 202 Ariz. 19, 27, ¶ 18, 39 P.3d 543, 548 (App. 2002). This Court “has discretion to set the restitution amount according to the facts of the case to make the victim whole,” and the restitution award will be upheld on appeal if it “bears a reasonable relationship to the victim’s loss.” *Id.* at ¶ 20.

For restitution purposes, a “victim” includes any entity, such as an insurer, that actually suffers the economic loss resulting from the convicted person’s criminal activity. *State v. Morris*, 173 Ariz. 14, 16, 839 P.2d 434, 436 (App. 1992). As the Court of Appeals explained in *In re Erika V.*, 194 Ariz. 399, 401, ¶ 5.0.0.1, 983 P.2d 768, 770 (App. 1999), the statute permits restitution to an insurance company because an insurer “stands in the shoes of the victim because it is legally required to suffer the victim’s own precise loss.” *Id.* at 299, 836 P.2d at 1009.

In this case, the victim ABC corporation is the entity that actually incurred the expense necessary to repair the criminal damage the juvenile perpetrated. Therefore, this Court must order the juvenile, his parents, or both, to make full or partial restitution to ABC Corporation.